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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,)	No. Cr. S 04-372 JAM
)	
12 Plaintiff,)	STIPULATION AND ORDER REDUCING
)	SENTENCE PURSUANT TO 18 U.S.C.
13 v.)	§ 3582(c) (2)
)	
14 GARY DEWAYNE McWHORTER,)	<u>RETROACTIVE CRACK COCAINE</u>
)	<u>REDUCTION CASE</u>
15 Defendant.)	
)	
16 _____)	

17 Defendant, GARY DEWAYNE McWHORTER, by and through his attorney,
18 Assistant Federal Defender David M. Porter, and plaintiff, UNITED
19 STATES OF AMERICA, by and through its counsel, Assistant U.S. Attorney
20 Paul A. Hemesath, hereby stipulate as follows:

21 1. Pursuant to 18 U.S.C. § 3582(c) (2), this court may reduce the
22 term of imprisonment in the case of a defendant who has been sentenced
23 to a term of imprisonment based on a sentencing range that has
24 subsequently been lowered by the Sentencing Commission pursuant to 28
25 U.S.C. § 994(o);

26 2. On January 26, 2006, this Court sentenced Mr. McWhorter to a
27 term of imprisonment of 235 months. His guideline range was 235 to 293
28 months, based on a total offense level of 33 and criminal history

category VI;

3. By amended judgment dated August 5, 2010, this Court granted Mr. McWhorter's stipulated motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2). Under Amendment 706, the Court lowered Mr. McWhorter's total offense level from 33 to 31, and imposed a sentence of 188 months, the low end of the applicable guideline range of 188 to 235 months, Mr. McWhorter's criminal history category being VI;

4. The sentencing range applicable to Mr. McWhorter was subsequently lowered by the United States Sentencing Commission in Amendment 750, from 31 to 29, resulting in a new guideline range of 151 to 188 months;

5. Accordingly, the parties request the court enter the order lodged herewith reducing Mr. McWhorter's term of imprisonment to a term of 151 months.

Dated: December 6, 2011

Respectfully submitted,

BENJAMIN B. WAGNER
United States Attorney

DANIEL J. BRODERICK
Federal Defender

/s/ Paul A. Hemesath
PAUL A. HEMESATH
Assistant U.S. Attorney
Attorney for Plaintiff
UNITED STATES OF AMERICA

/s/ David M. Porter
DAVID M. PORTER
Assistant Federal Defender
Attorney for Movant
GARY DEWAYNE McWHORTER

ORDER

This matter came before the Court on the stipulated motion of the defendant for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2).

The parties agree, and the Court finds, that Mr. McWhorter is entitled to the benefit of the retroactive amendment reducing crack cocaine penalties, which reduces the applicable offense level from 31

STIPULATED MOTION and ORDER REDUCING SENTENCE

1 to 29.

2 IT IS HEREBY ORDERED that the term of imprisonment originally
3 imposed is reduced to 151 months;

4 IT IS FURTHER ORDERED that all other terms and provisions of the
5 original judgment remain in effect.

6 Unless otherwise ordered, Mr. McWhorter shall report to the United
7 States Probation office closest to the release destination within
8 seventy-two hours after his release.

9 Dated: December 8, 2011

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11 /s/ John A. Mendez

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13 HONORABLE JOHN A. MENDEZ
14 United States District Judge
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